UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,251	12/01/2003	Robert Jason Vickers	P146	1935

27752 7590 03/23/2011

THE PROCTER & GAMBLE COMPANY
Global Legal Department - IP
Sycamore Building - 4th Floor
299 East Sixth Street
CINCINNATI, OH 45202

EXAMINER	
LAU, JONATHAN S	

ART UNIT	PAPER NUMBER
1623	

MAIL DATE	DELIVERY MODE
03/23/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/725,251	VICKERS ET AL.	
	Examiner	Art Unit	
	Jonathan Lau	1623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 January 2011*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3 and 6-20* is/are pending in the application.

4a) Of the above claim(s) *9-20* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 3 and 6-8* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This Office Action is responsive to Applicant's Amendment and Remarks, filed 11 Jan 2011, in which claim 1 is amended to require the limitations of dependent claim 2 and claim 2 is canceled.

This application is a domestic application, filed 01 Dec 2003.

Claims 1, 3 and 6-20 are pending in the current application. Claims 9-20, drawn to non-elected inventions, are withdrawn. Claims 1, 3 and 6-8 are examined on the merits herein.

Rejections Withdrawn

Applicant's Amendment, filed 11 Jan 2011, with respect to claims 1, 3 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baillon et al. (US Patent Application Publication 2003/0195166, published 16 Oct 2003, filed 9 Mar 2001, of record, corresponding to WIPO Publication WO 01/65949, provided by Applicant in IDS mailed 18 May 2005) has been fully considered and is persuasive, as claim 1 is amended to require the limitations of dependent claim 2 and Baillon et al. does not specifically teach a composition wherein the short chain oligofructose comprises from about 30% to about 40% 1-kestose, from about 50% to about 60% nystose, and from about 5% to about 15% 1F-beta-fructofuranosylnystose, by weight of the short chain oligofructose.

This rejection has been **withdrawn**.

The following are modified grounds of rejection necessitated by Applicant's Amendment, filed 11 Jan 2011, in which claim 1 is amended to require the limitations of dependent claim 2 and claim 2 is canceled.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Amended Claims 1, 3 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baillon et al. (US Patent Application Publication 2003/0195166, published 16 Oct 2003, filed 9 Mar 2001, cited in PTO-892, corresponding to WIPO Publication WO 01/65949, provided by Applicant in IDS mailed 18 May 2005) in view of

Flickinger et al. (J. Anim. Sci., August 2003, 81(8), p2008-2018, provided by Applicant in IDS mailed 15 Aug 2007).

Baillon et al. teaches as above. Baillon et al. teaches fructooligosaccharides (FOS) and GOS are synthetically made and sold (page 2, paragraph 15).

Baillon et al. does not specifically teach a composition wherein the short chain oligofructose comprises from about 30% to about 40% 1-kestose, from about 50% to about 60% nystose, and from about 5% to about 15% 1F-beta-fructofuranosylnystose, by weight of the short chain oligofructose (instant claim 1).

Flickinger et al. is drawn to dog food compositions. Flickinger et al. teaches scFOS in the form of NutraFlora added to a dog food composition (page 2010, right column, paragraph 4). The commercial product Nutraflora is defined in the instant specification as having 34% 1-kestose, 55% nystose and 10% 1F-beta-fructofuranosylnystose (Instant Specification, Page 4, second paragraph).

It would have been obvious to one of ordinary skill at the time of the invention to combine Baillon et al. in view of Flickinger et al. Both Baillon et al. and Flickinger et al. are drawn to the use of a non-digestible carbohydrate such as fructooligosaccharides to affect intestinal bacteria in a pet such as a dog. One of ordinary skill in the art would have been motivated to combine Baillon et al. in view of Flickinger et al. with a reasonable expectation of success because Baillon et al. teaches the fructooligosaccharides added to the pet food of Baillon et al. may be a commercial product and Flickinger et al. teaches the commercial fructooligosaccharide product NutraFlora added to a dog food.

Response to Applicant's Remarks:

Applicant's Remarks, filed 11 Jan 2011, have been fully considered and not found to be persuasive.

Applicant notes that in Flickinger the scFOS was administered orally by gelatin capsule to avoid the possibility of scFOS degradation during diet processing. Applicant suggests this teaches away from using scFOS in its form for use in a diet, or a nutritionally balanced dog or cat food. However, Flickinger teaches the dietary supplement to be a form of dietary inclusion of the fructran (page 2008, abstract). The invention as claimed encompasses the composition formed by the combination of a gelatin capsule containing the scFOS supplement added to a dog food composition. It is would have been common knowledge in the prior art that adding a gelatin capsule, such as a medication or a dietary supplement, to a dog food composition is well known method of administering a gelatin capsule to a dog. The composition formed by the combination of a gelatin capsule containing the scFOS supplement added to a dog food composition would have been obvious to one of ordinary skill in the art at the time of the invention.

Further, Flickinger also teaches the embodiment of incorporation of oligofructose into an extruded diet, which may have caused some degradation or complexing of the oligofructose, in addition to the embodiment of administering scFOS via gelatin capsule in order to prevent any losses during diet manufacturing as well as allowing for a constant level of fructan intake (page 2017, left column, paragraph 4). MPEP II. 2123 citing *In re Gurley*, 27 F.3d 551, 554, 31 USPQ2d 1130, 1132 (Fed. Cir. 1994) provides

"A known or obvious composition does not become patentable simply because it has been described as somewhat inferior to some other product for the same use." That Flickinger acknowledges the possibility that incorporation of oligofructose into an extruded diet may have caused some degradation which was avoided by the use administering scFOS via gelatin capsule, or being somewhat inferior to some other product for the same use, does not necessarily teach away from incorporation of fructan into an extruded diet because that formulation being somewhat inferior was known in the art. Further, one of ordinary skill in the art would have recognized other factors, such as simplicity of manufacturing the fructan incorporated into an extruded diet rather than in a gelatin capsule added to a dog food composition, in weighting the suggesting power of Flickinger teaching the possible degradation or complexing of the oligofructose.

Therefore the teaching of Flickinger taken as a whole is not deemed to teach away from the combination of fructan with a dog food composition, either as the combination of a gelatin capsule containing the scFOS supplement added to a dog food composition or as the incorporation of fructan into an extruded diet.

Conclusion

No claim is found to be allowable.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan Lau whose telephone number is (571)270-3531. The examiner can normally be reached on Monday - Thursday, 9 am - 4 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia Anna Jiang can be reached on 571-272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jonathan Lau
Patent Examiner
Art Unit 1623

/SHAOJIA ANNA JIANG/
Supervisory Patent Examiner
Art Unit 1623